Superior Court of Arizo	ona
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# En Banc

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En Banc
Newsletter of the
Superior Court Law
Library

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#### **Law Library News**

#### New Library Resources

Other than maintaining the current collection, the Law Library has been unable to purchase new books for the past couple of years. Now, within the past few months, we have added quite a few new titles to our collection. We maintain a *New Book Shelf* on the plaza level and encourage you to stop by and take a look. Remember that even though a book is new, it may be checked out provided you find a card and pocket on the inside cover. And check the *Recently Received Books* section of this issue of the newsletter.

Have you used our microfiche collection lately? Many people forget about these resources, and there are new things here too. You may have noticed that we moved all of the microfiche cabinets to the south end of the second floor. We have also removed the two coin operated reader/printers. We are no longer charging for microfiche copies. Don't forget that if you have a microfiche reader at your office, we have the capability of duplicating entire fiche. The cost is just \$.50 cents and copies are handled by the Information Desk staff.

In addition to moving the cabinets, we have added a new set to our microfiche collection. The *American Bar Association Archive* is a comprehensive collection of ABA research documents, including published and unpublished titles. The set, which originally included materials produced up to 1994, is periodically updated with titles from 1995 forward. In order to provide access to these titles, we

have added full bibliographic records to our *Horizon* catalog so they may be searched by title, author, subject or keyword. Currently, we have added records for materials dated prior to 1990. As soon as we obtain newer records from the publisher, we will add those as well.

We have also added catalog records for our *Native American Legal Materials*Collection. This microfiche set contains a wide variety of documents relating to Native American legal issues, including tribal legal documents, treaties, U.S. government documents, state documents, publications from private and public organizations, periodicals, treatises, and reference works.

Other microfiche sets you should keep in mind include the *National Center for State Courts* collection of monographs, periodicals, annual reports, technical reports and other documents published by the National Center; and the *American Law Institute* archive collection, which includes historical materials such as drafts, minutes and studies for the Restatements of the Law and A.L.I. model codes.

#### Printing From the Online Room

By now you may have noticed that there are no longer any printers in the online room. All print jobs are being directed to the network laser printer located at the Reference Desk. This will cut down on the noise level in the online room, as well as improve the speed and quality of your printing. Your print jobs will be at the Reference Desk in a numbered tray that corresponds to the number on the monitor of the computer where you are working. Let us know what you think of this new arrangement.

#### SCLL on the Web

In addition to moving microfiche cabinets, we have also moved some databases on the web page. LegalTrac and FirstSearch can now be accessed by clicking on the hyperlink Search SCLL's Online Catalog and Indexes. These databases can only be used by inhouse Library patrons or on computers located within the Maricopa County government firewall, due to current licensing restrictions.

LegalTrac, an index to legal periodicals, allows users to search by author, title, subject or keyword. The full text of the article is not contained in the database but many of the journals can be located on the third floor of the Library.

FirstSearch is a compilation of databases covering a broad range of topics from arts and humanities to engineering to business to government and law. Some of these databases provide the full text of articles while others have abstracts, and some are simply indexes.

The Law Library has been developing WebPAC, our web-accessible online catalog, to include access to several web-based databases. Now via the Z39.50 Horizon interface, users can access the Library of Congress Catalog, WorldCat, Index to Legal Periodicals and PAIS. Since these databases are from OCLC, OCLC member library holdings information is displayed. These databases are available and can be accessed from your computer at:

http://156.42.2.2/webpac-bin/wgbroker ?new+-access+top. If you have any problems using WebPAC, please contact Sarah Andeen at 506-3681 or sandeen @smtpgw.maricopa.gov.

If you have any questions on how to use any of these databases, please stop by the Reference Desk or make an appointment for a one on one

training class.

#### **Continuing Legal Education**

Remember last year when you said you were not going to wait until June to finish up your CLE credits? Well you can start earning them this month by attending *Employment Law Issues for Lawyers Who Represent Small Businesses* on August 28 from 9:00 to 4:30. In conjunction with the Scottsdale Bar Association, this State Bar seminar may qualify for up to 5.5 hours of MCLE credits, including 3 hours of ethics credit.

A panel of seven attorneys will teach you how to recognize and handle workers' compensation claims; how to resolve conflicts among employees; the "problems and pitfalls" associated with the Americans with Disabilities Act; how to differentiate between independent contractors and employees; and how to handle discrimination claims from both the plaintiff and defense viewpoint.

When you finish with that one, you can head up to Flagstaff and attend the *Annual Workers' Compensation Seminar - Guidelines, Updates and Practice Tips.* Scheduled for September 23-25, this seminar fulfills the requirements to become a certified specialist in the workers' compensation field.

If you do not want to attend all three days, you'll earn 4.25 hours of MCLE by attending just the first day which will include the newly required professionalism course recently adopted by the Arizona Supreme Court. On the second day the focus will be on the practical applications of the A.M.A. guidelines, the new civil appellate rules and an update on recent case law. Attendance on the second day may earn you 6.5 hours of credit. The final day, which qualifies for up to 4.25 hours of MCLE credit, will cover the new intoxication affirmative defense.

Check with the State Bar at 252-4804 for more details on either of these seminars or visit their web site at www.azbar.org.

#### **Superior Court Update**

#### Judicial Retention

In 1992, Arizonans voted to amend the state constitution to require periodic reviews of the performance of appointed judges. As a result, the Commission on Judicial Performance Review was created.

The Commission is comprised of members from the public sector, attorneys and judges. The purpose of the Commission is to provide the public with "clear and accurate" reports on how well Arizona judges are doing their jobs. The Commission gathers surveys from jurors, witnesses, litigants, administrative staff and attorneys - all of whom have seen the judge at work. Input from the public, through written comments and public hearings, is also used to compile the reports. This time around. the Commission looked at 22,250 surveys which took four months to review.

This year there are 32 Maricopa County Superior Court judges up for retention. They are: Judges Aceto, Armstrong, Barker, Bolton, Cates, Dairman, Dann, Davis, de Leon, Dougherty, Gerst, Gottsfield, Hauser, Hertzberg, Hoag, Hotham, Ishikawa, Jones, Kamin, Keppel, Mangum, Mundell, O'Toole, Portley, Rogers, Schwartz, Scott, Seidel, Stitcht, Topf, Wilkinson and Yarnell.

If you are interested in specific details about the survey results for a particular judge, you can reach the Commission at 542-9664. Additional information is available on the Internet at www.supreme.state. az.us/judges2.htm.

#### **Electronic Resources**

#### Internet Site Reviews

### The Brief Reporter www.briefreporter.com

Thanks to this web site, long gone are the days when an attorney had to contact a court clerk for every copy of a brief. The Brief Reporter, started by two former employees of Michie Publishing, scours legal publications for noteworthy federal and state cases. Then they call the lawyers involved and ask for permission to publish their work on the Web. Each brief is analyzed, indexed and abstracted. In addition, the Brief Reporter gives a short biography of each brief's author and provides a link to the firm's web site.

The database is updated weekly and even allows for registered users to receive notification of recently received briefs tailored to that user's practice.

While the searching is free, the briefs cost \$40.00 each or \$10.00 for those who pay the \$35.00 monthly subscription fee. Past users praise this service saying "it gives you the thought process of lawyers, as opposed to judges."

The list of topics is quite extensive and includes child support, death penalty, discovery, expert witnesses, jury instructions, both legal and medical malpractice, punitive damages, sanctions, sentencing, and statute of limitations.

#### **DivorceNet**

http://www.divorcenet.com/

This site was created and is maintained by *LawTek*, a group of attorneys interested in connecting the general public with the bar in a constructive, educational manner; connecting attorneys with each other to share information and "war stories;"

and connecting people with practical advice and emotional support.

DivorceNet provides people with information on matters surrounding divorce such as paternity, child support, marital assets, and domestic violence. The site has several bulletin boards where subscribers can share information and obtain advice from others who are in similar situations. There is a reading room and resource links for many states. Overall, a good resource for anyone dealing with the multitude of issues relating to divorce.

## Publications of Interest on the Internet

A Re-Examination of the ABA Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies. (July 1998)

www.abanet.org/legalserv/advertising.html

This "White Paper" was presented for the purpose of discussing the Rules of Professional Conduct as they relate to the Internet as a marketing tool for legal services. The rules were promulgated in 1983, long before the use of the world wide web, e-mail and other technologies. Given these technological advancements, "lawyers now need direction on the ethical propriety of these activities."

This paper covers proposals for revisions to the rules particularly Rules 7.1 through 7.3 which are followed by comments.

#### Ballot Propositions Publicity Pamphlet for the 1998 General Election

www.sosaz.com/election/1998Info/PubPamphlet/Cover.html

The next general election is November 3, 1998 and this site gives you the full text of the official general election pamphlet. It provides the title of the proposition, senate or house resolution number, the text of the proposed amendment along with arguments both for and against each

proposition. You'll also find information on how to register to vote.

Summary for the Bench and Bar of the Request for Comment on Preliminary Draft of Proposed Amendments to the Federal Rules of Evidence and Civil Procedure http://www.uscourts.gov/review.html

This document outlines the proposed rule changes for the Federal Rules of Evidence and Civil Procedure and details how to submit comments. This is the first time that electronic comments will be accepted by the rules committee. The full text of the amendments and further information on how to submit electronic comments will be available in hard copy or on the web site www.uscourts.gov beginning August 20, 1998. One of the major revisions in these amendments is to Civil Rule 26. The web page also includes a summary of the proposed amendments to the Bankruptcy rules. Bankruptcy comments are due by January 1, 1999 with Civil and Evidence comments due February 1, 1999. If accepted, the amendments would be effective December 1, 2000 or later.

#### Did You Know?

Test your knowledge of the following unusual laws and trivial legal concepts.

- 1. True or False: In Kentucky it is illegal to use a reptile during any part of a religious ceremony.
- 2. True or False: In 1983 a Montana Supreme Court upheld an award of \$240,000 in damages to a pig farmer based on expert testimony on "porcine stress syndrome," related to the construction of a nearby highway.
- 3. Can a person legally change his or her name to a number?

- 4. True or False: A federal court has dismissed an action against Satan, a.k.a. "The Devil," for lack of personal jurisdiction.
- 5. True of False: Buzzards are classified as songbirds in Ohio, making it illegal to buy or sell one.

#### **New Materials in the Library**

#### Article Reviews

Friedland, Steven I. "Law, Science and Malingering." 30 *Arizona State Law Journal* 337 (Summer 1988).

One of the most difficult problems an employer faces is trying to determine if a sick employee is really ill or if they are guilty of malingering. Fake illnesses and injuries cost employers and insurance companies significantly, both in terms of lost productivity and in false workers compensation claims. However, if the worker is truly ill, the employer is obligated to make reasonable accommodations. This article takes an in-depth look at this problem and explores some of the methods that employers and courts can use to help separate out the frauds.

Friedland begins by outlining some of the problems and cost associated with malingering and then goes on to discuss in broad terms how fraud is exposed by the legal system. He describes such methods as hypnosis, truth serum, and lie detector tests and outlines the pros and cons of each. Next, Friedland explores the various types of evidence, both direct and indirect of malingering and discusses how to go about compiling and presenting this evidence.

The article then goes on to look at various types of malingering claims in detail and shows how various claims are made and what kinds of people are likely to submit them. One

common claim among criminal defendants is that of insanity, Friedland looks at this claim and explores how it effects the proceedings at various stages in the trial.

The article concludes by exploring the differences between law and science and outlines some of the ways in which the two can be reconciled. He proposes a modification to Federal Rule of Evidence 611 in order to help courts develop procedures to better handle the evidence and claims associated with malingering and other scientific issues. This is a comprehensive, in-depth article that will provide anyone looking for information on this topic with a wealth of information.

# Arkfeld, Michael R. "Are Court Records Commodities?" 84 ABA Journal 116 (July 1998).

With the increasing use of computers and the Internet, and the development of government web sites, people expect everything to be available on the Internet for free. This expectation has lead to the development of many great government sites but has also lead to some agencies charging fees to access public records in electronic format. Many courts are charging people to access this public information which has caused some consternation. However, other courts, such as the Maricopa County Superior Court, are providing free access to court information. Arkfeld applauds this step and urges other courts to follow suit.

In the course of this article, Arkfeld makes some strong points for free access to court data and urges attorneys and others in the legal profession to push their own courts for free electronic access to the court.

#### Recent Court Decisions

## State v. Rodriquez, CR-97-0120-AP (July 14, 1998)

In State v. Rodriquez, a recent death penalty case, the Arizona Supreme Court's reversal of a trial court's decision was based upon that court's refusal to instruct the jury on the defense of alibi.

On trial for sexual assault, first-degree burglary and first-degree murder, the defendant's alibi was that he was at work at the time of the killing. Having produced evidence that such an inference could be made, the court concluded that the evidence reasonably supported the defendant's defense. Next the Supreme Court addressed the issue of whether the trial court erred in failing to give the alibi instruction (RAJI, (Criminal) No. 12).

Writing for the Court, Justice McGregor, said the "jury must acquit a defendant if the alibi evidence raises a reasonable doubt about whether the defendant committed the crime." If the jury does not receive such an instruction, they may assume that the defendant bears the burden of proving his alibi.

#### From Other Jurisdictions

### Georgia Supreme Court Family Law Decision

On July 13, the Georgia Supreme Court ruled that "[I]mprisonment under civil sanctions is always conditional and a party found in contempt may apply for release at any time upon a showing of inability to pay." (Hughes v. Georgia Department of Human Resources, \$98A0813).

For six years, Joel Hughes failed to pay court-ordered child support in the amount of \$100.00 per week. Having been found guilty of "wilful contempt" by the trial court, he was jailed. It should be noted that prior to his incarceration, Hughes was employed earning \$10.00 per hour.

Two months later, Hughes applied for a discretionary review stating that he did not have sufficient money or property to pay the debt. In its reversal of the trial court, the Supreme Court wrote that while incarceration is warranted by statute in such a case, "a trial court may not continue incarceration for civil contempt when the respondent lacks the ability to purge himself."

In a concurring opinion, Justice Huntstein calls for the county to establish alternative programs to give the court other sentencing options such as work release.

#### Texas Supreme Court Unauthorized Practice Hearing

In our April issue we wrote about the battle brewing in Texas over allegations that Nolo Press, publishers of legal self-help law books, is engaging in the unauthorized practice of law. On August 20, the UPL Committee, under the supervision of the Texas Supreme Court, will hold a hearing to determine if, in fact, Nolo Press is guilty as charged.

Nolo has now filed suit against the Supreme Court in an effort to obtain more information about the allegations against it. Without knowledge of the evidence or even an understanding of how the proceedings will be conducted, Nolo says it cannot defend itself. Ironically, Texas law prohibits an out of state corporation from representing itself in court so Nolo has been forced to hire an Austin law firm to represent it.

For more information on this ongoing case, check out Nolo's web site (www.nolo.com) where they write, "[O]ur books are so good, they might be banned in Texas."

#### "Did You Know?" Answers

- 1. True. (Lawson v. Commonwealth, 164 S.W. 2d 972).
- 2. True. (*Howery v. Montana*, 664 P.2d 1387).
- 3. No. Both the Supreme Court of North Dakota (*Petition of Dengler*, 246 N.W.2d 758) an a California appellate court (*Richie v. San Francisco*, 206 Cal. Rptr. 239) have held that individuals can privately call themselves whatever they choose, but legally a name cannot be a number.
- 4. True. The Court held that the action failed to establish that the "Lord of Darkness" had the minimum contacts necessary to permit suit in federal court. (*U.S. ex rel. Mayo v. Satan and His Staff*, 54 F.R.D. 282).
- 5. True. (State ex rel. Hyter v. Treater, 368 N.E. 2d 854).

From: Healey, Paul D. "De Minimis Curat Lex: A Compendium of Legal Trivia." 89 *Law Library Journal* 55 (1997).

#### **Contributors**

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#### Recently Received Books

Psst! Hey, you! Yeah, you know who I'm talking to. Did you see it? Come on, you had to have seen it! What do you mean, you don't know what I'm talking about? Where have you been? All right, all right. Go look now. Go on. Flip to the next three pages. But don't forget to come back!

You've seen it now, right? The "Recently Received Books" list! It's

HUGE! Pretty cool, huh? Yeah, I thought you'd agree. I'm so excited! Can you tell? Did you look through the list? We have something for EVERYONE! Want something on the Fourteenth Amendment? We've got it! (Chester James Antieau The Intended Significance of the Fourteenth Amendment KF4558 14th A57 1997). Looking for employment law materials? Look no further! (Mark W. Bennett Employment Relationships: Law & Practice KF3455 .B456). Are you a landlord? Have I got the book for you: Robert Friedman's How to Survive Legally as a Landlord, 3rd ed. (Plaza KF590 .Z9 F75 1995)! Want a video to watch at home? Our video collection is ever-growing. Where is our video collection? At the Information Desk, silly! Haven't you seen them? There's not enough room to list them here, so go look.

This is so exciting! Hey, don't laugh! It's like having a birthday every day! All right, so you aren't as excited about this as I am. That's fine! Just be sure and appreciate all the hard work I did to bring these books to you! The decisions (fine, so I didn't choose all the books), the cataloging (OK, so I don't catalog them! Michelle and Frankie do all of that.), the stamping and labeling (no, I don't do that either!). But I did send in the order for them! That has to count for something!

I'm sure I can find you at least one book in this list that will appeal to you! Bet you I can! If you do nothing else you simply MUST read/look at/glance at Don't Pee on My Leg and Tell Me It's Raining, by Judy Sheindlin (KFN5116.5 .Z9 S54 1996). You know her - Judge Judy from TV! Yeah, that woman. Fascinating! The title alone makes it worth picking up and giving it the once over! This is assuming, of course, that you can get the book away from the staff members who are reading it first!

Are you having trouble finding these

great new titles? If they aren't on the "New Books" shelf on the first floor, then look at the call number. Does it begin with a "KF"? Second floor, west side of the building. Not a "KF"? Try up on the third floor, west side of the building. Walk back towards the windows. They will be back there in the first four or five shelves. Does it say "CMS"? That's a librarian-oriented book. Ask someone at the Information Desk (like Susan or Karen or Rebecca) or the Reference (like Sarah or Corinne). Someone will get it for you if you'd like to look at it. Still can't find it? Ask! We'll find it for vou.

Well, I won't keep you any longer. I just had to point out all these new things. But, listen, don't forget to keep checking the "New Books" shelf on the Plaza Level by the elevator. We have all sorts of things coming in. I'll see you next time with more fascinating books to tell you about.

Abraham, Henry J.

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The Intended Significance of the
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William S. Hein & Co., Inc.
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Garland
RA1151 .A77 1996

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National Center for State Courts
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Change
University of Michigan Press
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Solve the Puzzle: Interplay Among
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M. Lee Smith Publishers
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Bennett, Mark W.

Employment Relationships: Law & Practice

Aspen Law & Business

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Berinstein, Paula Finding Statistics Online: How to Locate the Elusive Numbers You Need Information Today HA32 .B47 1998

The Best Interests of the Child: The Least Detrimental Alternative Free Press KF547 .B47 1998

Boss, Richard W.

The Library Administrator's

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Information Today

CMS Z678.9.A4 U6193 1997

Brushwood, David B.

Pharmacy Malpractice Law &
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Complex Criminal Litigation:
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